

IN THE
Supreme Court of the United States

CEDRIC RICKS,
Petitioner,

v.

STATE OF TEXAS
Respondent.

On Petition for a Writ of Certiorari to the
Texas Court of Criminal Appeals

**RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A
WRIT OF CERTIORARI AND APPLICATION FOR
A STAY OF EXECUTION**

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This is a capital case.

QUESTIONS PRESENTED

1. Whether the Court should grant review of a claim that was not raised or passed upon in the court below.
2. Whether the Court has jurisdiction over claims that were disposed of in the court below on an adequate and independent state law ground.
3. Whether the Court should expend its limited resources to consider fact-bound questions raised in last-minute litigation where the claims have already been reviewed and found to be meritless.

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BRIEF IN OPPOSITION

Cedric Ricks is **scheduled to be executed after 6:00 p.m. on March 11, 2026**. He was convicted and sentenced to death in 2014 for the gruesome murders of his girlfriend Roxann Sanchez and her eight-year-old son Anthony Figueroa during an attack in which Ricks also brutally stabbed Roxann's twelve-year-old son Marcus. *See Ricks v. State*, No. AP-77,040, 2017 WL 4401589, at *1 (Tex. Crim. App. Oct. 4, 2017). Ricks has since unsuccessfully challenged his conviction and sentence in state and federal court, including by raising a claim in his first state habeas application alleging his counsel on direct appeal was ineffective for failing to raise a claim under *Batson v. Kentucky*, 476 U.S. 79 (1986), and several claims in his federal habeas proceedings alleging *Batson* error and related ineffectiveness claims.¹ Indeed, the federal courts resolved those claims on the merits *after* Ricks obtained and presented the prosecution's jury selection notes. *See Ricks v. Lumpkin*, 120

¹ *See Ricks v. Lumpkin*, 120 F.4th 1287, 1290–91 (5th Cir. 2024) (denying Ricks a certificate of appealability as to his *Batson* claims, his claim alleging ineffectiveness of appellate counsel, and his claim alleging his trial counsel was ineffective for failing to object to the prosecution's exercise of peremptory strikes against nine women); *Ricks v. Lumpkin*, No. 4:20-CV-1299-O, 2023 WL 8224931, at *7–10 (N.D. Tex. Sept. 26, 2023) (rejecting Ricks's *Batson* claims and trial-counsel-ineffectiveness claim on the merits), *13 (rejecting Ricks's appellate-counsel-ineffectiveness claim on the merits); *Ex parte Ricks*, No. WR-85,278-01, 2020 WL 6777958, at *1 (Tex. Crim. App. Nov. 18, 2020) (rejecting *on the merits* Ricks's claim that his appellate counsel was ineffective for failing to argue on direct appeal that the trial court erred in overruling his *Batson* objection).

F.4th at 1290 (“[T]he notation of racial identity in the prosecution’s jury selection notes does not, without more, constitute racial discrimination.”); *Ricks v. Lumpkin*, 2023 WL 8224931, at *8.

In October 2025, the state district court scheduled Ricks’s execution for March 11, 2026. Amended Ord. Granting Mot. and Setting Date for Execution, *Texas v. Ricks*, No. 1361004 (371st Judicial Dist. Ct., Tarrant Cnty., Tex. Oct. 20, 2025). Four months after his execution was scheduled, Ricks filed a subsequent state habeas application that largely reraised and repackaged claims he unsuccessfully litigated during his federal habeas proceedings, along with a motion for a stay of execution.² In his subsequent application, Ricks raised *Batson* claims alleging the prosecution exercised peremptory strikes on the basis of race against two venirepersons, A. Stafford and W. Stafford—strikes that Ricks contested in his first state habeas application. Subs. Appl. 6–19; 1 SHCR-01 at 164, 176–77 (alleging appellate counsel was ineffective for not raising *Batson* claims with respect to A. Stafford and W. Stafford).³ The TCCA dismissed the subsequent application and denied the related motion for

² See generally Subsequent Appl. for Post-Conviction Writ of Habeas Corpus, *Ex parte Ricks*, No. WR-85,278-02 (Tex. Crim. App. Feb. 26, 2026) (Subs. Appl.); Mot. for Stay of Execution, *Ex parte Ricks*, No. WR-85,278-02 (Tex. Crim. App. Feb. 26, 2026).

³ “SHCR” refers to the state habeas clerk’s record preceded by the volume number and followed by the page number. “RR” refers to the Reporter’s Record of transcribed trial proceedings, preceded by the volume number and followed by the page number(s). “CR” refers to the Clerk’s Record on appeal, preceded by volume number and followed by the page number.

a stay of execution, stating Ricks “failed to show that he satisfies the requirements of Article 11.071 § 5.” *Ex parte Ricks*, No. WR-85,278-02, 2026 WL 617575, at *1 (Tex. Crim. App. Mar. 4, 2026). The court explained that it dismissed “the application as an abuse of the writ without reviewing the merits of the claims raised.” *Id.* at 3.

Ricks now seeks certiorari review of the TCCA’s dismissal of his *Batson* claims, Pet. Cert. 6, as well as a stay of execution, *see generally* Appl. for Stay of Execution (Appl. for Stay). However, this Court is without jurisdiction to hear his *Batson* claims because they were dismissed on an adequate and independent state law ground below. Ricks also raises a due process claim for the first time alleging the TCCA’s dismissal of his *Batson* claims was fundamentally unfair and violated his right to due process. Pet. Cert. 6–10. But Ricks’s due process claim is waived due to his failure to raise it below. Moreover, Ricks is unable to present any special or important reason for certiorari review, and he fails to demonstrate a violation of any federal constitutional right. Further, the dilatory nature and absence of any arguable merit of Ricks’s petition foreclose his request for a stay of execution. Certiorari review as well as Ricks’s request for a stay of execution should be denied.

STATEMENT OF THE CASE

I. Facts of the Crime

The federal district court summarized the facts of Ricks's murder of Roxann Sanchez and her young son:

The domestic violence dispute between Ricks and Roxann Sanchez escalated into a nightmarish episode of brutality. Ricks and Sanchez lived together with their nine-month-old child Isaiah and Sanchez's two sons from a previous marriage—eight-year-old Anthony Figueroa and twelve-year-old Marcus Figueroa. In 2013, Ricks and Sanchez got into a verbal altercation at their residence. That altercation quickly turned physical as Ricks and Sanchez began hitting each other. Anthony and Marcus tried to get between them to break up the fight, but Ricks pushed Marcus down and continued hitting Sanchez with his fists. Ricks then got a knife from the kitchen and stabbed Sanchez multiple times while she tried to protect herself. Marcus quickly ran and tried to call the police. But Ricks chased him down, pushed him to the ground, and stabbed him multiple times in the back of his neck. Ricks then pushed Anthony to the ground beside Marcus and stabbed him until he made a gargling noise. When Marcus tried to get up, Ricks got on top of him and began stabbing him again. Ricks finally stopped stabbing Marcus after Marcus played dead by imitating the gargling noise Anthony had made.

After the brutality, Ricks put the knife in the kitchen, washed his hands, and showered. He then made a phone call, packed his clothes, placed Isaiah in his crib, and left the apartment. Ricks then called his cousin, Tamara Butts, and said that he “did something bad” and asked to speak to her father, Joseph Sanders. Ricks told Sanders he “messed up” and “killed Sanchez and the boys” and asked him to get Isaiah from the residence. When he spoke with Butts again, Ricks told her that he killed Sanchez, Anthony, and Marcus. But he refused to tell Butts how he killed them or where he was. He insisted that Butts also go to the residence to get Isaiah. Butts urged Ricks to turn himself in. Ricks assured Butts that he would die before that happened.

After Ricks hung up, Butts called the police and informed them of what Ricks told her. Following that call, Marcus—alive but covered in blood—called the police and informed them that Ricks killed his mother and brother. He also informed them that he believed Ricks had left and that his mother’s car was missing. The police arrived shortly after and discovered the bodies of Sanchez and Anthony. Marcus was immediately flown to the hospital and later recovered from his injuries. Isaiah was also taken to the hospital as a precautionary measure but was found to be unharmed. Based on the information from Butts and Marcus, Ricks was stopped in Oklahoma in Sanchez’s car and arrested.

Ricks v. Lumpkin, 2023 WL 8224931, at *1.

II. Evidence Pertaining to Punishment

A. The prosecution’s punishment evidence

The prosecution presented evidence of Ricks’s abuse of several women. Tina Brown dated Ricks when they were in high school. 38 RR 119. James Cooper, head of security at the school, said on one occasion he drove Ricks home because he received a suspension. 36 RR 7–15. As Cooper re-entered the school, Ricks was forcibly removing his girlfriend from the building. 36 RR 12–13; 38 RR 144. Cooper stopped and handcuffed Ricks. 36 RR 13–15. Ricks confirmed he was arrested a couple of times for incidents involving Brown. 40 RR 62–63.

Tashana Singleton was Ricks’s ex-wife. 37 RR 14. On an occasion in April 1998, Ricks punched Singleton in the jaw because she wanted to end the relationship. 37 RR 13. Singleton testified regarding other incidents over several years in which Ricks choked her, punched her (breaking a tooth on one

occasion), kicked her, threatened her with a knife, and threatened to kill her. 37 RR 14–22, 36–37.

Ricks and Singleton divorced, 37 RR 20–21, and Singleton obtained protective orders against Ricks, but he constantly violated them. 37 RR 21–22, 40. During one child-custody exchange, Singleton had her father, Calvin Thompson, accompany her. 37 RR 24. This upset Ricks, and he threatened to kill her and Thompson. 37 RR 25–26, 63. Singleton changed the custody-exchange location to the police station. 37 RR 27. During an exchange at the police station in 2004, Ricks choked Singleton and beat her in the face and head until she was unconscious. 37 RR 28–32, 46–51. A passer-by yelled at Ricks to stop, but he continued to beat Singleton, appearing to hold Singleton up by the throat. 37 RR 46–51. Police officers came to assist, but Ricks continued hitting Singleton while they tried to pull him away. 37 RR 51–52.

Tamara Partridge began a relationship with Ricks in June 2004. 36 RR 22. After about a year, Ricks began to hurt her. 36 RR 31. On one occasion, he “smacked” her across the face. 36 RR 31–32. On another, Ricks broke her phone, held her against the wall, and choked her. 36 RR 33–34. She ended the relationship in 2008 because she could no longer endure his abuse. 36 RR 38.

Jennifer Clark met Ricks in late 2008, and they lived together for about fifteen months. 35 RR 109–11, 118. During one fight, Clark threw a candle at Ricks for saying mean things to her. 35 RR 131. Clark picked up the phone to

call the police when Ricks refused to leave, but Ricks threatened to kill her. 35 RR 131.

In November 2012, Ricks and Sanchez had an argument that “turned physical.” 40 RR 30–33, 71–73. Ricks choked Sanchez to the point of unconsciousness and beat her head on the bathroom floor. 34 RR 61; 35 RR 13–19; 40 RR 32–33, 72–73. Sanchez obtained an emergency protective order against Ricks, which Ricks admitted violating. 34 RR 26–27; 40 RR 37, 66; 45 RR 10–13.

B. Ricks’s punishment evidence

A detention officer with the Tarrant County Jail said he had no issues with Ricks. 38 RR 170–72. Regarding an altercation at the Garvin County Jail involving Ricks, a video was admitted showing Ricks did not start the fight. 38 RR 17–24; 46 RR 4–8.

Several childhood friends and coaches testified on Ricks’s behalf. 38 RR 40–54. They said Ricks was a supportive friend and an aggressive teammate on their football and basketball teams. 38 RR 77–78, 102, 155; 40 RR 8–13, 18–20. They also said Ricks’s parents were supportive. 38 RR 27–28, 75.

Edna McCullough, a family friend, testified about an incident where Ricks started a fire in a car by lighting a tissue with a cigarette lighter when he was young. 38 RR 62–64. She expressed her concerns to Ricks’s mother that something was wrong with him. 38 RR 64–66. Kimberly McCullough, Ricks’s

cousin, said Ricks was impulsive. 38 RR 91–93. Thomas Abner, another cousin, said Ricks called him days before the murders and seemed stressed about money. 38 RR 83–84. Joe Sanders, Ricks’s uncle, said Ricks lived with him for about six months while going to school to be a medical technician where Ricks graduated with honors. 28 RR 164–165, 169.

Ricks’s brother, Dwayne, recalled that when Ricks got in a rage, he was like a different person until he worked through it. 38 RR 186. They went to therapy as kids but didn’t follow through with it. 38 RR 188–89.

Ricks’s father, Shederick, said he and his wife Helen had many discussions about Ricks starting when Ricks was young. 38 RR 117–18, 131, 192. They thought Ricks was a very mischievous child so they would discipline him, but it “got to a point where . . . you just can’t discipline them this way all the time.” 38 RR 118. They had Ricks admitted to a hospital for a month after he was out of high school. 38 RR 124–27, 142–43.

Dr. Jeffrey Lewine, a neuroscientist, testified about neurological and behavioral testing performed that showed Ricks had a biological predisposition toward aggression and violence. 39 RR 132–33, 144. Biology and Ricks’s early environment contributed to his predisposition. 39 RR 124, 145.

Ricks said he had been stressed and depressed for financial reasons prior to the murders. 40 RR 30, 38, 67. He said he was “sorry about everything.” 40 RR 37. He agreed he was impulsive and aggressive, 40 RR 44, and he admitted

having trouble controlling his anger. 40 RR 39, 44, 47. Ricks maintained he stabbed Sanchez and her sons because he feared for his life when the “whole house” ganged up on him. 40 RR 45, 77–81. Ricks admitted to being arrested numerous times for, e.g., domestic violence, theft, disorderly conduct, and violating a protective order. 40 RR 58–59.

III. Procedural History

Ricks was convicted and sentenced to death in 2014 for capital murder. *See Ricks v. State*, 2017 WL 4401589, at *1. The TCCA affirmed Ricks’s conviction on direct appeal. *Id.* Ricks filed a state application for a writ of habeas corpus, which the TCCA denied on the trial court’s findings and conclusions and on its own review. *See Ex parte Ricks*, 2020 WL 6777958, at *1–2.

Ricks then filed an amended federal habeas petition. *See Ricks v. Lumpkin*, 2023 WL 8224931, at *1. The district court denied Ricks’s amended petition as well as his motion to alter or amend judgment. *Id.* at *14; *Ricks v. Lumpkin*, No. 4:20-CV-1299-O, 2023 WL 8125338, at *3 (N.D. Tex. Nov. 22, 2023). Ricks then sought a certificate of appealability (COA), which the Fifth Circuit Court of Appeals denied, *Ricks v. Lumpkin*, 120 F. 4th at 1291, and this Court denied Ricks’s petition for a writ of certiorari, *Ricks v. Guerrero*, 146 S. Ct. 124 (Oct. 6, 2025).

The state trial court then scheduled Ricks's execution for March 11, 2026. Amended Ord. Granting Mot. and Setting Date for Execution, *Texas v. Ricks*, No. 1361004 (371st Judicial Dist. Ct., Tarrant Cnty., Tex. Oct. 20, 2025). Ricks later filed in state court a suggestion that the TCCA reconsider its 2020 denial of his first habeas application, a subsequent state habeas application, and associated motions for a stay of execution. *See Ex parte Ricks*, 2026 WL 617575, at *1. On March 4, 2026, the TCCA declined to reconsider its dismissal of Ricks's first application, dismissed the subsequent application as an abuse of the writ, and denied a stay of execution. *Id.* Ricks then filed in this Court a petition for a writ of certiorari and an application for a stay of execution. The instant opposition follows.

REASONS FOR DENYING THE WRIT

The *Batson* claims for which Ricks seeks review were dismissed by the court below on an adequate and independent state law ground, Texas Code of Criminal Procedure Article 11.071, § 5(a), which deprives this Court of jurisdiction to hear them. *See Ex parte Ricks*, 2026 WL 617575, at *1. Even assuming jurisdiction, Ricks has not furnished a reason the lower court erred in rejecting his claims, let alone a compelling reason for this Court to grant a writ of certiorari. To the extent Ricks raises a due process claim with respect to the TCCA's dismissal of his *Batson* claims, the claim is waived because Ricks did not raise it in the court below. The due process claim is also a spurious

workaround of this Court’s precedent regarding a habeas applicant’s burden to show a state court’s application of a procedural bar was not independent of federal law or adequate to preclude federal court review. This Court should not grant certiorari to entertain Ricks’s novel and baseless “claim” that the TCCA’s rote application of its abuse-of-the-writ bar violated his right to procedural due process.

Moreover, as noted above, Ricks’s *Batson* claims—the same claims based on the same evidence and argument—were reviewed on the merits during his federal habeas proceedings and found to be meritless. Indeed, Ricks’s assertion that “[t]he State’s racial discrimination in jury selection” has never been “scrutinized,” Pet. Cert. 6, is simply untrue. Tellingly, Ricks did not even seek this Court’s review of his supposedly “weighty” *Batson* claims when he sought certiorari review last year. Appl. for Stay 4; *see generally* Pet. Cert., *Ricks v. Guerrero*, No. 24-7038 (Apr. 15, 2025). Nothing about his *Batson* claims is compelling.

For the same reasons, Ricks is not entitled to a stay of his execution. Further, the public interest weighs heavily in timely enforcement of the state court’s judgment. Ricks’s sordid and disturbing history of repeatedly and violently abusing his romantic partners and the gruesome facts of his stabbing attack of his girlfriend and her eight- and twelve-year-old sons pretermit any notion that the public has an interest in delay. Ricks’s last-minute effort to

relitigate issues he has already lost, raised now under the gloss of a waived and frivolous due process claim, should be rejected.

Ricks's petition is simply unworthy of the Court's attention, and his application for a stay of execution should be denied.

ARGUMENT

I. Ricks's Due Process Claim Is Waived and Meritless.

Ricks first raises a claim alleging the TCCA's application of its abuse-of-the-writ bar violated his right to due process. Pet. Cert. 6–10. He never alleged in the court below—or any court—that he had a due process right to consideration of the merits of his *Batson* claims or that it would be fundamentally unfair for the TCCA to refuse to consider the merits of the claims. Ricks argued only that his *Batson* claims satisfied Texas's abuse-of-the-writ statute and that the TCCA should authorize the claims under the Texas Constitution. Subs. Appl. 22–23 (citing *Ex parte Wood*, --- S.W.3d ---, 2025 WL 2148862, at *16 (Tex. Crim. App. July 30, 2025) (Schenck, P.J., concurring in part and dissenting in part)). Ricks's procedural due process claim is, therefore, waived. See *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005) (“[W]e are a court of review, not of first view[.]”); *Howell v. Mississippi* 543 U.S. 440, 443–46 (2005); *Adams v. Robertson*, 520 U.S. 83, 86–87 (1997) (“With ‘very rare exceptions,’ we have adhered to the rule in reviewing state court judgments under 28 U.S.C. § 1257 that we will not consider a petitioner’s federal claim

unless it was either addressed by, or properly presented to, the state court that rendered the decision we have been asked to review.” (citation omitted)); *Yee v. City of Escondido, Cal.*, 503 U.S. 519, 533 (1992) (“Because petitioners did not raise their substantive due process claim below, and because the state courts did not address it, we will not consider it here.”).

Even assuming the Court could review Ricks’s due process claim, it would not be worthy of this Court’s attention. First, Ricks’s due process claim sounds in civil rights, not habeas, as it challenges the state court’s procedures rather than Ricks’s conviction or sentence. *Cf. Heck v. Humphrey*, 512 U.S. 477, 480–82 (1994); *Brown v. Dretke*, 419 F.3d 365, 378 (5th Cir. 2005) (infirmities in state habeas proceedings are not grounds for federal habeas relief). Indeed, Ricks relies on civil rights precedent as his only support for this claim. Pet. Cert. 6–7 (citing *Dist. Attorney’s Off. For Third Jud. Dist. v. Osborne*, 557 U.S. 52 (2009), and *Reed v. Goertz*, 598 U.S. 230 (2023)). Consequently, Ricks fails to raise a cognizable claim.

Second, Ricks cannot show the state court’s straightforward application of Texas’s abuse-of-the-writ bar was fundamentally unfair. In *Osborne*, this Court explained that a “criminal defendant proved guilty after a fair trial does not have the same liberty interests as a free man.” 557 U.S. at 68. Therefore, states have “more flexibility in deciding what procedures are needed in the context of postconviction relief.” *Id.* at 69. A due process right to postconviction

relief is “limited,” and “due process does not ‘dictat[e] the exact form such assistance must assume.” *Id.* (quoting *Pennsylvania v. Finley*, 481 U.S. 551, 559 (1987)).

Like Congress has, states may impose procedural requirements in their postconviction schemes, including “a range of diligence requirements.”⁴ *Id.* at 63. Under *Osborne*, the question is whether Texas’s postconviction procedures offend some fundamental principle of justice. *Id.* at 69. Ricks could only make such a showing if Texas’s subsequent habeas procedures are fundamentally inadequate to vindicate the rights provided, *id.*, but this Court has recognized that “it would seem particularly strange to disregard state procedural rules that are substantially similar to those to which [federal courts] give full force in [their] own courts.” *Beard v. Kindler*, 558 U.S. 53, 62 (2009). His challenge to Texas’s abuse-of-the-writ bar, then, necessarily fails.

Crucially, Ricks had no federal constitutional right to file a subsequent habeas application.⁵ *See Osborne*, 557 U.S. at 72; *Murray v. Giarratano*, 492

⁴ Compare 28 U.S.C. § 2244(b)(1)–(2), with Tex. Code Crim. Proc. art. 11.071, § 5(a)(1)–(3).

⁵ Relatedly, Ricks also fails entirely to show he had a constitutional right to access to the prosecution’s jury selection notes. *See Broadnax v. Lumpkin*, 987 F.3d 400, 407–09 (5th Cir. 2021) (jury selection notes fall outside the prosecution’s obligation to disclose favorable evidence). Under Texas law, production of a prosecutor’s jury selection notes may be required when the prosecutor refreshes his or her memory regarding the exercise of peremptory challenges by reviewing the notes before a *Batson* hearing. *Pondexter v. State*, 942 S.W.2d 577, 582 (Tex. Crim. App. 1996) (en banc).

U.S. 1, 7–8 (1989); *Finley*, 481 U.S. at 555–56. Nonetheless, Texas’s limitation on the availability of subsequent habeas review is consistent with “traditional notions of finality,” *Osborne*, 557 U.S. at 72, and the TCCA’s decision in this case was not “inconsistent with the ‘traditions and conscience of our people,’” *id.* at 70 (citation omitted). This is particularly true considering that Ricks raised *Batson* objections at trial, and his appellate counsel made the considered decision not to raise claims alleging *Batson* error. *See* 3 SHCR-01 at 1426–59 (appellate counsel’s affidavit detailing her decision not to raise claims alleging *Batson* error). More tellingly, Texas’s postconviction procedures allowed Ricks to raise a claim alleging his appellate counsel was ineffective for not raising *Batson* claims, and the state court adjudicated that claim *on the merits*. *Ex parte Ricks*, 2020 WL 6777958, at *1. Considering the opportunities that were available to him to litigate *Batson* issues, Ricks cannot fit through the “slim room” left by *Osborne* to show that Texas’s postconviction procedures denied him procedural due process. *Skinner v. Switzer*, 562 U.S. 521, 525 (2011). That Ricks later obtained the prosecution’s jury selection notes—which, as discussed below, do nothing to advance his allegation that the prosecution’s peremptory strikes were motivated by racial bias, *see Ricks v. Lumpkin*, 2023 WL 8224931, at *8—does not undermine the conclusion that Texas’s postconviction procedures were adequate to protect Ricks’s rights.

At bottom, though, Ricks’s due process “claim” is nothing more than a novel workaround of this Court’s precedent requiring a habeas petitioner to show that a state court’s imposition of a procedural bar was not independent of federal law and adequate to foreclose federal review. *See Foster v. Chatman*, 578 U.S. 488, 497 (2016) (“This Court lacks jurisdiction to entertain a federal claim on review of a state court judgment ‘if that judgment rests on a state law ground that is both ‘independent’ of the merits of the federal claim and an ‘adequate’ basis for the court’s decision.’” (quoting *Harris v. Reed*, 489 U.S. 255, 260 (1989))).⁶ As discussed below, viewed properly under this Court’s precedent, Ricks’s attempt to avoid the lower court’s imposition of a procedural bar should be rejected.

II. The Court Below Dismissed Ricks’s *Batson* Claims on an Adequate and Independent State Law Ground, Which Deprives this Court of Jurisdiction.

Ricks seeks review of the lower court’s dismissal of his *Batson* claims. *See generally* Pet. Cert. But as discussed above, “[t]his Court lacks jurisdiction to entertain a federal claim on review of a state court judgment ‘if that judgment rests on a state law ground that is both ‘independent’ of the merits

⁶ This Court in *Foster* held the state court’s bar of the petitioner’s *Batson* claim was not independent of the merits of his federal claim because the state court “engaged in four pages of” a *Batson* analysis and concluded the claim was without merit. 578 U.S. at 498. Here, the TCCA’s terse order explicitly stated it did not review the merits of Ricks’s claims. *Ex parte Ricks*, 2026 WL 617575, at *1.

of the federal claim and an ‘adequate’ basis for the court’s decision.” *Foster*, 578 U.S. at 497 (citation omitted). The state law ground barring federal review may be “substantive or procedural.” *Coleman v. Thompson*, 501 U.S. 722, 729 (1991).

To be adequate, a state law ground must be “firmly established and regularly followed.” *Lee v. Kemna*, 534 U.S. 362, 885 (2002) (quoting *James v. Kentucky*, 466 U.S. 341, 348 (1984)). Discretion does not deprive a state law ground of its adequacy because “a discretionary rule can be ‘firmly established’ and ‘regularly followed’—even if the appropriate exercise of discretion may permit consideration of a federal claim in some cases but not others.” *Kindler*, 558 U.S. at 60–61. Ultimately, situations where a state law ground is found inadequate are but a “small category of cases.” *Kemna*, 534 U.S. at 381.

A state law ground is “independent of federal law [when it] do[es] not depend upon a federal constitutional ruling on the merits.” *Stewart v. Smith*, 536 U.S. 856, 860 (2002). There is no presumption of federal law consideration. *Coleman*, 501 U.S. at 735–36. To so find, the state court’s decision must “fairly appear to rest primarily on federal law or to be interwoven with federal law.” *Id.* at 735. Where there is no “clear indication that a state court rested its

decision on federal law, a federal court’s task will not be difficult.”⁷ *Id.* at 739–40.

A Texas court may not reach the merits of a claim in a subsequent application “*except* in exceptional circumstances.” *Ex parte Kerr*, 64 S.W.3d 414, 418 (Tex. Crim. App. 2002). The applicant bears the burden of providing “sufficient specific facts establishing,” Tex. Code Crim. Proc. art. 11.071, § 5(a), one of these “exceptional circumstances,” *Ex parte Kerr*, 64 S.W.3d at 418.

Relevant here, an applicant can prove either factual or legal unavailability of a claim. Tex. Code Crim. Proc. art. 11.071, § 5(a)(1). This requires proof of unavailability in *all* prior state habeas applications. *See Ex parte Campbell*, 226 S.W.3d 418, 421 (Tex. Crim. App. 2007). A claim is legally unavailable when its legal basis “was not recognized or could not have been reasonably formulated from a final decision of [this Court], a court of appeals of the United States, or a court of appellate jurisdiction of [Texas],” Tex. Code Crim. Proc. art. 11.071, § 5(d), and factually unavailable when its factual basis “was not ascertainable through the exercise of reasonable diligence,” Tex. Code Crim. Proc. art. 11.071, § 5(e).

Ricks’s argument rests on his assertion that the state court got the § 5(a)(1) determination wrong. Pet. Cert. 8. But that argument alleges nothing

⁷ Ricks makes no argument that the TCCA’s dismissal of his *Batson* claims was not independent of federal law. *See generally* Pet. Cert.

more than that the state court made erroneous factual findings or misapplied a rule of law, a patently insufficient basis for this Court’s review. Sup. Ct. R. 10. Moreover, Ricks’s attempt to satisfy § 5(a)(1) was premised entirely on the prosecution’s jury selection notes, which he says he obtained in 2021. Pet. Cert. 5. However, he did not need the notes to litigate a *Batson* claim, as evidenced by the facts that (1) he raised a *Batson* objection at trial and (2) he raised an appellate-counsel-ineffectiveness claim in his first state habeas application, which was denied on the merits. Indeed, the state habeas court made extensive findings with respect to Ricks’s appellate-counsel-ineffectiveness claim, finding that the prosecution’s reasons for striking A. Stafford and W. Stafford were not pretexts for racial discrimination. 4 SHCR-01 at 1958–66.

As noted above, Argument Section I, Ricks’s procedural due process “claim” is more properly understood as an argument that the TCCA’s dismissal of his *Batson* claims was an unforeseeable or unsupportable decision. *See* Pet. Cert. 6. But this is simply not a situation where the state court’s imposition of a bar was exorbitant. *See, e.g., Kemna*, 534 U.S. at 376, 381–84. Ricks’s meritless *Batson* claims could have been raised on direct appeal, and it is utterly unremarkable that the TCCA refused to authorize further proceedings after Ricks had multiple opportunities to—and did—litigate *Batson* issues. This is simply not an “exceptional case[.]” or “the rarest of situations, [where] ‘an unforeseeable and unsupported state-court decision on a question of state

procedure does not constitute an adequate ground to preclude this Court’s review of a federal question.” *Cruz v. Arizona*, 598 U.S. 17, 26 (2023) (quoting *Bowie v. City of Columbia*, 378 U.S. 347, 354 (1964)).

Ultimately, the abuse-of-the-writ bar—a state-law ground clearly and unambiguously applied by the TCCA—prohibits this Court from exercising jurisdiction over Ricks’s *Batson* claims. *See Kunkle v. Texas*, 125 S. Ct. 2898, 2898 (2004) (Stevens, J., concurring) (“I am now satisfied that the Texas court’s determination was independently based on a determination of state law, *see* Tex. Code Crim. Proc. art. 11.071, § 5 [], and therefore that we cannot grant petitioner his requested relief.”). The claims are foreclosed by an adequate and independent state procedural bar, and certiorari review should be denied.

III. Ricks Provides No Compelling Reason for Further Review, and His Claims Lack Merit in Any Event.

The Court requires those seeking a writ of certiorari to provide “[a] direct and concise argument *amplifying* the reasons relied on for allowance of the writ.” Sup. Ct. R. 14.1(h) (emphasis added). The Court would be hard pressed to discover any such reason in Ricks’s petition, let alone amplification thereof. Indeed, Ricks makes no allegation of circuit or state-court-of-last-resort conflict. *See* Sup. Ct. R. 10(a)–(b). As noted above, the only conclusion is that Ricks seeks correction of what he believes was error by the lower court. But that is a plainly inadequate basis for this Court to expend its limited resources.

Sup. Ct. R. 10. And such a request is particularly inappropriate here because, as discussed above, the court below did not reach the merits of Ricks's *Batson* claims. *Ex parte Ricks*, 2026 WL 617575, at *1. Nonetheless, Ricks's claims are not compelling.

A. *Batson* caselaw

Claims of race-based use of peremptory strikes are governed by the three-step test enunciated in *Batson*. See *Rice v. Collins*, 546 U.S. 333, 338 (2006). A defendant must first make out a prima facie case that raises an inference of discrimination. *Batson*, 476 U.S. at 96–97. Factors that might undergird a prima facie case are a party's pattern of strikes and statements during voir dire and any other relevant circumstance that raises an adverse inference. *Id.* at 96–97. If such a showing is made, the prosecutor must provide a race neutral explanation for the strikes in question. *Id.* at 97–98. This does not demand an explanation that is persuasive or even plausible, only one that is not inherently discriminatory. *Purkett v. Elem*, 514 U.S. 765, 767–68 (1995) (per curiam). Finally, the trial court weighs the evidence and determines whether the race neutral explanation is credible or merely a pretext. *Batson*, 476 U.S. at 98. This “largely will turn on evaluation of credibility.” *Id.* at 98 n.21. Credibility can be measured by the prosecutor's demeanor, the reasonableness of his explanations, and whether the proffered rationale has

some basis in accepted trial strategy. *Miller-El v. Cockrell*, 537 U.S. 322, 339 (2003).

B. Ricks’s *Batson* claims are meritless.

At trial, Ricks challenged the strikes of A. Stafford and W. Stafford, 30 RR 26, noting the questioning of A. Stafford lasted an hour and a half, which was “probably the longest voir dire,” 30 RR 32. But the trial court found he failed to make out a prima facie case. 30 RR 35–37.

Indeed, the prosecution exercised eleven of its fourteen peremptory strikes (78%) on White venirepersons, two strikes (14%) against Black venirepersons, and the prosecution *accepted* two Black venirepersons, one of whom sat on the jury (the other was struck by Ricks, 30 RR 19). 30 RR 14–25, 34. Of the first 120 panel members, fifteen were Black (12.5%). 3 SHCR-01 at 1063–186 (redacted juror questionnaire excerpts).

Similarly, if only the members within the “strike zone” are considered, Black venirepersons comprised 11% (four of the first thirty-six), 3 SHCR-01 at 1063–186, and the prosecution exercised 14% of its strikes on Black venirepersons, consistent with the group’s representation. Though the prosecution struck two of the Black venirepersons within the strike zone, Ricks could not show purposeful discrimination based on these small numbers, nor could he even raise an adverse inference of discrimination where the numbers did not bear out his claim, *Ricks v. Lumpkin*, 2023 WL 8224931, at *7–8.

Faced with a record that doesn't support his *Batson* claims, Ricks relies almost entirely on the prosecution's jury selection notes and this Court's opinion in *Foster*. Pet. Cert. 12 (citing *Foster*, 578 U.S. at 512). But *Foster* bears no resemblance to this case. It involved a trial in which the prosecution struck *all* qualified Black venirepersons, and the prosecution's notes contained explicit, "persistent" references to race as a reason to strike them, including the phrase "definite No's" listed next to the Black venirepersons. 578 U.S. at 491, 494–95 ("If it comes down to having to pick one of the black jurors, [this one] might be okay."), 504, 511 ("NO. No *Black* Church."), 512–13. This Court found *Batson* error after conducting an extensive comparative analysis of the accepted and stricken venirepersons and noting the prosecution's "shifting explanations, the misrepresentations of the record, *and* the persistent focus on race in the prosecution's file." *Id.* at 512 (emphasis added). As the federal district court explained, the prosecution's jury selection notes in this case "do not give rise to an inference of purposeful prosecutorial discrimination," *Ricks v. Lumpkin*, 2023 WL 8224931, at *8, and Ricks fails to identify any evidence similar to that in *Foster* that led this Court to find *Batson* error.

For example, the list of venirepersons, *see* Pet. Cert. 3, includes the gender and race of *all* the first 120 members that were within the selection zone, and nothing stands out about the notations regarding A. Stafford and W. Stafford. Further, the notations on the jury seating chart, Pet. Cert. 2, are

consistent with the discussions that occurred during the *Batson* challenge. *See* 30 RR 26–34. In accord, the chart reflects notations of the African-American venirepersons struck by the defense as well as those struck *and accepted* (Barnes and Bean) by the State. Pet. Cert. 2. Further, no notations were made beyond those discussed in court, including no indication of the race of other minority venirepersons such as number 41, Raglin, an African American (JQ 1641).⁸ Pet. Cert. 2.

Additionally, the question marks reflected on this chart, Pet. Cert. 2, are consistent with the questions that took place in court regarding the ethnicity of the venirepersons. 30 RR 26–31. For example, the question mark for Aguiero appears to have been crossed off, Pet. Cert. 2, consistent with the record reflecting her explanation at voir dire that she was not Hispanic. 30 RR 29. The prosecution’s notes reflect nothing more than a memorialization of the ethnicity and gender of the venire panel and do not render the reasons provided by the prosecutor for striking A. Stafford and W. Stafford pretextual.

As discussed below, and as the federal district court and Fifth Circuit have held, Ricks’s *Batson* claims fail even after considering the prosecution’s notes.

⁸ “JQ” refers to the Bates-stamped juror questionnaires, which were filed under seal in the federal district court. *Ricks v. Lumpkin*, No. 4:20-CV-1299 (N.D. Tex. Dec. 21, 2022), ECF No. 53.

1. A. Stafford

The prosecutor explained his reasons for striking A. Stafford. 3 SHCR-01 at 1462. A. Stafford's questionnaire, JQ 384–402, indicated she was not in favor of the death penalty, 3 SHCR-01 at 1462. Indeed, she marked she was not in favor of the death penalty, did not provide arguments for or against it, and indicated she believed the death penalty had been used in an unfair manner. JQ 386. The prosecutor also said he struck A. Stafford because she had no children, had a brother who received a twenty-five-year prison sentence for murder, served on a jury that returned a not guilty verdict, and expressed distrust in the criminal justice system. 3 SHCR-01 at 1462; *see* JQ 399, 401.

At voir dire, A. Stafford explained she had served on two juries, one sexual assault case and one evading arrest case. 15 RR 71. The evading arrest trial took place a couple of years prior to Ricks's trial, and it resulted in a verdict of not guilty. 15 RR 72–73, 102–103. As for her brother, he was on parole for a murder conviction after serving eighteen years. 15 RR 82–86. She did not feel it was a fair outcome. 15 RR 85. She also had a brother-in-law who was incarcerated, but she was not particularly close to him. 15 RR 87.

The record plainly shows the prosecutor's reasons for striking A. Stafford were race neutral. Opposition to the death penalty is a race-neutral justification, as are prior jury service that may give a prosecutor "pause" and a venireperson's family member's "carceral status." *Davis v. Ayala*, 576 U.S.

257, 271–72, 284 (2015); *Rhoades v. Davis*, 914 F.3d 357, 382–83 (5th Cir. 2019). So too is a venireperson’s vacillation on whether she could impose a death sentence. *See Ayala*, 576 U.S. at 280 (“The prosecution’s reluctance to take a chance that [a venireperson] would ultimately be willing to consider the death penalty in accordance with state law did not compel the trial judge to find that the strike . . . was based on race.”).

Ricks challenges the race-neutral strike of A. Stafford by comparing her to several jurors. Pet. Cert. 14–20. He contrasts A. Stafford with White juror Attebery. *Id.* at 15–19. He argues A. Stafford’s answers were more favorable to the death penalty, Attebery believed her uncle had been falsely convicted, and they were disparately questioned about their impressions of the criminal justice system. *Id.* But the two had important differences.

Although Attebery had reservations about the death penalty, she did not believe the death penalty had been applied unfairly, and she had a child. JQ 99, 102. Attebery’s prior jury service in a juvenile murder trial resulted in a guilty verdict and a thirty-year sentence. JQ 110–11. She had an uncle she thought may have been falsely convicted of abusing his son in Missouri, but she was not close to them. 12 RR 197–198. Although Attebery’s son was charged with domestic violence against his girlfriend, JQ 108, he received deferred adjudication, and Attebery said he had to take ownership of the

consequences. 12 RR 198–205. These distinctions, e.g., between closeness in relation and severity of offense, are meaningful. *Rhoades*, 914 F.3d at 382–83.

Ricks also compares A. Stafford to juror Flint, who had a son who was or had been incarcerated. Pet. Cert. 16. But Flint was in favor of the death penalty and had several children. JQ 674, 677. His son had been to jail for “minor traffic violations and warrants,” JQ 684, whereas A. Stafford’s brother spent several years in prison for murder. 15 RR 82–86. Again, this is a meaningful distinction. *See Rhoades*, 914 F.3d at 383.

Ricks also contends the prosecutor’s reason that he did not want jurors with no children was pretextual because jurors Twietmeyer, Lemay and alternate juror Smith indicated they had no children. Pet. Cert. 19–20. However, unlike A. Stafford, Twietmeyer, JQ 33, Lemay, JQ 1223, and Smith, JQ 1621, were in favor of the death penalty. Moreover, the State accepted Black venirepersons with children, 30 RR 19–20: Bean, JQ 831, and Barnes, JQ 963.

Finally, Ricks contrasts the questioning of A. Stafford’s prior jury service with the questioning of jurors Flint, Dorman, and Attebery who were not questioned about their prior service. Pet. Cert. 19. However, A. Stafford’s unclear responses on the questionnaire invited clarification. JQ 397–98. She did not recall the years of her jury service and she indicated a verdict was reached in a Tarrant County trial but the jury did not assess punishment and

that the defendant “left” in a Denton County trial. JQ 397–98. Flint’s prior jury service was a distant property damage case in 1983, JQ 685, and Dorman’s a DUI from a few years prior, JQ 154–55. Finally, Attebery clearly noted the details of her service, JQ 110–11. Ricks fails to show racial motivation when the prosecution had legitimate concerns to address regarding A. Stafford’s recent jury service. *See Rhoades*, 914 F.3d at 382–83.

2. W. Stafford

The strike on W. Stafford was based on her experience as an ordained minister and her belief that someone being a human being “could be enough to spare their life.” 3 SHCR-01 1462. Additionally, her mother had been incarcerated in prison. 3 SHCR-01 at 1462.

W. Stafford indicated she was in favor of the death penalty. JQ 1048. During voir dire, she explained she was an ordained minister and would “allow God to do the judging, because [she doesn’t] judge.” 20 RR 218, 268. While she averred she could answer the special issues such that the death penalty was imposed, 20 RR 268–69, she wrote in her questionnaire that the best argument against the death penalty is “God is the ultimate judge.” JQ 1048. W. Stafford agreed that, in relation to the mitigation special issue, “the idea of grace or the idea that somebody is just a human being” could be enough to spare someone’s life. 20 RR 280.

W. Stafford said her mother went to prison for three or four years for arson when Stafford was young. 20 RR 271. Moreover, she expressed interest in becoming a family counselor. 20 RR 218; JQ 1050. She said her bankruptcy and her son's diagnosis of schizophrenia were causing her stress, though she did not think it would interfere with her being on the jury. 20 RR 277–78; JQ 1054.

The prosecution was under no obligation to believe W. Stafford could, even with her best effort, set aside her feelings if she were empaneled. *See Ayala*, 576 U.S. at 280. The record supports the prosecution's race-neutral explanations and the trial court's finding. Given this substantial record-based evidence, Ricks fails to show the prosecution's strike of W. Stafford was improper. *See Ricks v. Lumpkin*, 2023 WL 8224931, at *8.

Ricks claims the prosecution disparately questioned W. Stafford by identifying Ricks to her in the courtroom and asking if she understood the prosecution was asking for him to be executed, by expressing concern with her involvement in church ministry but not objecting to seating jurors Hedrick and Dorman, and by not striking juror Attebery who also had a family member serve time in prison. Pet. Cert. 20–24. To begin, the prosecutor also identified Ricks to Hedrick and told him, “we’re going to stand up at some point during the trial and ask a jury to vote on those special issues in such a way that person receives the death penalty. Okay? By lethal injection.” *Compare* 24 RR 129,

with 20 RR 270; *see* 15 RR 300 (venireperson Rush). The prosecutor also asked Hedrick about his ability to follow the law in light of his religious beliefs. 24 RR 129 (“You know you’re active in your church. So you have a strong faith, right? . . . Can you take part in this process?”); 20 RR 268 (asking W. Stafford if her training in the ministry would interfere with her ability to follow the law).

Additionally, W. Stafford related her responses on arguments in favor or against the death penalty to her belief in God, JQ 1048, indicated she had studied for the ministry, JQ 1051–52, and said her views sided with what the Bible says,⁹ JQ 1053. Neither Dorman nor Hedrick noted such strong views on their questionnaires. JQ 147–48, 1559–60. W. Stafford stated she would “allow God to do the judging,” yet said she could sit on the jury. 20 RR 268. Dorman believed some people were “beyond rehabilitation.” JQ 143; 13 RR 116. As for Hedrick, when asked about being a youth minister, he said he was “mainly” an “IT director” but also worked with students, and he did not believe his church had a position on the death penalty. 24 RR 78, 118–19. Unlike W. Stafford, Hedrick did not have a prominent role in church and did not give conflicting answers. As noted above, the prosecution was under no obligation to believe

⁹ W. Stafford said her church’s position on the death penalty “varie[d] depending on the person[.]” 20 RR 267–268.

W. Stafford could set aside her feelings if she were empaneled. *See Ayala*, 576 U.S. at 280.

As for Attebery, she was “not really that close to” her uncle, 12 RR 197–198, unlike W. Stafford’s closer relation to her mother, JQ 1058. Finally, W. Stafford herself spent time in jail. JQ 1058; 3 SHCR-01 at 1462. Ricks again fails to rebut the prosecutor’s race neutral reasons. *See Ayala*, 576 U.S. at 271–72, 284; *Rhoades*, 914 F.3d at 382–83.

C. Conclusion

As discussed above, there is nothing compelling about Ricks’s *Batson* claims. They have been rejected before, and Ricks provides no basis for revisiting them. His petition should be denied.

IV. Ricks’s Application for a Stay of Execution Should Be Denied.

The Court should also deny Ricks’s request for a stay of execution. A stay of execution “is not available as a matter of right, and equity must be sensitive to the State’s strong interest in enforcing its criminal judgments without undue interference from the federal courts.” *Hill v. McDonough*, 547 U.S. 573, 584 (2006) (citing *Nelson v. Campbell*, 541 U.S. 637, 649–50 (2004)). Rather, the inmate must satisfy all the requirements for a stay, including a showing of a significant possibility of success on the merits. *Id.* (citing *Barefoot v. Estelle*, 463 U.S. 880, 895–96 (1983)). When the requested relief is a stay of execution, a court must consider:

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Nken v. Holder, 556 U.S. 418, 434 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). A court must consider “the State’s strong interest in proceeding with its judgment” and “attempt[s] at manipulation.” *Nelson*, 541 U.S. at 649–50 (citing *Gomez v. U.S. Dist. Court for Northern Dist of California*, 503 U.S. 653, 654 (1992)).

Ricks’s latest challenge to his conviction and sentence has been raised and rejected before. *See Ricks v. Lumpkin*, 120 F.4th at 1290. His attempt to re-raise several fact-bound claims at the last minute forecloses his appeal to equity. *See Bucklew v. Precythe*, 587 U.S. 119, 149–51 (2019). That delay, alone, requires a “strong equitable presumption” against a stay of execution. *Hill*, 547 U.S. at 584. Further, as demonstrated above, Ricks’s petition is unworthy of this Court’s attention, as he fails to demonstrate a likelihood of success on the underlying claims that are waived, jurisdictionally barred, and meritless.

Moreover, “[b]oth the State and the victims of crimes have an important interest in the timely enforcement of a sentence.” *Hill*, 547 U.S. at 584. Ricks abused women for more than a decade, and he viciously stabbed his girlfriend Roxann and her eight-year-old son Anthony to death. *See supra* Statement of the Case. The public has a strong interest in enforcement of Ricks’s sentence.

His last-minute attempt to reraise meritless claims is plainly a dilatory effort to delay his sentence. Such tactics underscore why the Court should deny his application for a stay. *See, e.g., Bucklew*, 587 U.S. at 149–51. Ricks presents no reason to delay his execution date any longer.

Lastly, Ricks cannot overcome the strong presumption against granting a stay or demonstrate that the balance of equities entitles him to a stay of execution. For the same reason, Ricks fails to show that he would suffer irreparable harm if denied a stay of execution. *See Walker v. Epps*, 287 F. App'x 371, 375 (5th Cir. 2008) (explaining that “the merits of [the movant’s] case are essential to [the court’s] determination of whether he will suffer irreparable harm if a stay does not issue”). This Court should deny Ricks’s application for a stay of execution.

CONCLUSION

For the reasons set forth above, Ricks’s petition for a writ of certiorari and his application for a stay of execution should be denied.

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